



March 10, 2009

The Honorable Charles E. Schumer
Chairman
U.S. Senate Committee on Rules and Administration
Washington, DC 20510

Dear Senator Schumer:

Thank you for your leadership by holding the hearing "Voter Registration: Assessing Current Problems."

During this past election cycle, Common Cause and our coalition partners ran programs in states where the voter registration policies or practices of the state were having the impact of purging eligible voters from the registration lists or keeping eligible voters off the rolls. In other words, we stepped into the breach to protect citizen's voting rights.

Federal reform of registration law should aim to put Common Cause and our coalition partners out of work so that voter registration processes are not so onerous and confusing that they are a barrier to voting, and that bureaucratic failures and administrative practices do not deprive eligible citizens of their right to vote.

Any federal effort to help eligible voters register to vote and cast ballots should at least address the following concerns.

- Voters should be able to cure registration problems up to and on Election Day to avoid disenfranchisement by typo or other bureaucratic issues. When voters make a good faith effort to register to vote – and then their names do not appear on the voter roles, they should not be disenfranchised. Simple administrative errors resulting in the misspelling of names and the mistyping of numbers on the part of overworked election officials can result, today, in voters' being denied the right to vote – at least in some states.
- Voters should be able to cure registration mistakes they have made up to and on Election Day. Today, in some states, simple errors on the part of a voter – such as failure to check a box or to sign a form – can also result in voters being denied the right to vote.

- Protections should be put in place so that voters' names are not purged from registration roles because of data matching errors. At the very least, the law should require no voter to be removed from the lists without being given timely and effective notification of the pending removal and an opportunity to contest and cure that removal up to and on Election Day.
- The process of voter registration should be modernized to be much more accessible and accurate through making it a routine part of other government databases so that third party groups do not have to fill in the gaps to help register citizens.

Below are three examples of the types of problems which Common Cause and our coalition partners stepped into the breach to address so that voters would not be disenfranchised either by administrative mistakes or draconian election administration policies.

Colorado

In Colorado, there were three major registration problems which impeded eligible voters from voting.

First, Colorado's voter registration form has a redundant "check box" that thousands of would-be voters failed to tick, voiding their registrations. Voters who did not have drivers license numbers and who instead provided alternative forms of ID verification (such as the last four digits of the Social Security number) but who failed to check an unnecessary box that stated that they did not have drivers licenses had their registrations rejected even though they were eligible voters who had provided all the information necessary to register. In October, Colorado Common Cause along with a dozen organizations (including the Brennan Center, National Lawyers Committee and Fair Elections Legal Network) submitted a letter to the Secretary of State, Governor and County Clerks urging them to accept these registration forms. Despite bad guidance from the Secretary of State's office, many counties were able to resolve the problem by registering the voters as ID-deficient.

Second, Secretary of State Mike Coffman removed thousands of voters from the official voter rolls after August 4, 2008, in violation of the NVRA which bans systematic removal of voters from the rolls within 90 days of a federal election, except for narrowly specified reasons. Colorado Common Cause was the lead plaintiff in litigation to reinstate these voters with support from Advancement Project, the Brennan Center, the Fair Elections Legal Network. Other plaintiffs included SEIU and Mi Familia Vota (My Family Votes) Jenny Flanagan, Colorado Common Cause's executive director, worked with the attorneys on the case in negotiations with the state that ultimately led to an agreement to protect voters unlawfully purged from the rolls. Through our work, the **44,000** voters who had been removed from the rolls between May 14 and Nov. 4 were re-enfranchised. Over 500 voters had their provisional ballots counted because of our efforts.

Third, Common Cause also challenged a Colorado law that removed voters from the rolls if a registration confirmation postcard was returned as undeliverable within 20 days (a similar rule was recently struck down in Michigan). Common Cause has been monitoring the processing of provisional ballots to ensure compliance with the state agreement. We will continue pursuing these issues so that they do not disenfranchise voters in future elections.

Florida

In Florida, the state legislature passed a law dubbed the “no match, no vote” law. Although initially suspended, the law was suddenly applied to everyone who tried to register to vote on or after Sept. 8 and required that voter registration form information—such as driver’s license and/or social security number—exactly match information already on file with the state. If not, the voter was placed on a “no match, no vote” list, their registration was suspended pending verification, and they had to vote by provisional ballot which would have only been counted if the voter then made a second trip to provide the central elections office with verifiable proof of identity within 48 hours after voting.

Of the 437,638 people who registered to vote from Sept. 8 to Oct. 6 in Florida, 22,606 were initially flagged as “no match.” These people were then contacted by county supervisors of elections to resolve their registration status. As of Oct. 28, 12,170 people remained on the list and were in jeopardy of having their vote not counted. These mismatched voters were disproportionately minority, young, and low-income.

To combat this problem, Common Cause Florida and Common Cause National undertook an ambitious outreach campaign to re-establish the registration of voters flagged as “no match, no vote.”

We hired three temporary regional field organizers in Duval, Hillsborough/Pinellas, and Alachua counties and assigned Common Cause Florida staff to work in Leon and Sarasota counties. Public records requests were made to obtain the names and phone numbers of people on the “no match, no vote” lists at both designated county and statewide levels. Using this information, staff and organizers directly contacted 636 flagged voters during the week of Oct. 20, informed them of their status, and gave them critical registration information, assistance with form completion, and even rides to the polls. They were able to reach hundreds more via voicemail and family member contact. We discovered many people whose registrations had been rejected because their name had changed due to marriage or divorce, or had recently moved due to military service and therefore their addresses in state databases were older than their voter registrations. Others had their eligibility removed due to a typo, or to a data entry problem due to penmanship. Handwriting skills have in effect become the new literacy tests for voting in Florida.

In the week before Election Day – using the Department of State’s final list of 12,170 flagged voters – we enlisted local and national volunteers, a contracted phone bank vendor, and a national data firm to obtain phone numbers for 5,317 potential voters of whom we directly contacted 3,735. This was a considerable level of time and expense that would have been completely unnecessary if Florida had reasonable voter registration policies.

As Election Day approached, an attorney for the Florida State Association of Supervisors of Elections issued an opinion that allowed counties to permit flagged voters to vote with a regular ballot by bringing the proper identification and resolving “no match” verifications at the polls or during early voting periods. In other words, the new policy did not mandate that voters would have to vote by provisional ballot and then return to the polls or the county elections office a second time with identification.

Common Cause Education Fund launched a campaign to persuade all the counties in Florida to reject the more cumbersome policy and adopt the new one. The campaign consisted of letters to the editor in state newspapers, and direct calls and e-mails to the supervisors of elections. Along with our coalition partners, we sent letters to each county supervisor. The coalition included the League of Women Voters of Florida, the Florida Public Interest Research Group, the Florida 501 (3) Civic Engagement Table, the American Civil Liberties Union of Florida, the Florida League of Conservation Voters, the Florida Voters Coalition, the Southwest Voter Registration Education Project, and Progress Florida.

At the end of the week before the election, we found that only nine counties out of the 67 initially affected were following the directive of the secretary of state’s office to force “no match” voters to vote by provisional ballot. Twenty-nine counties agreed to process IDs and issue regular ballots at the polls, while eight more accepted IDs and issued provisional ballots but did not require the voter to come back with proof of ID. Nine counties verified all of their “no match” voters prior to Election Day.

In conclusion, we were successful in significantly blunting the impact of the “no match, no vote” law by helping to restore the right to vote for the 12,170 Floridians who faced the very real threat of disenfranchisement.

However, in the course of our work, we also uncovered many examples of people who had registered to vote prior to the deadline but were ineligible because they had failed to check a box affirming that they were mentally competent, not convicted felons, or US Citizens. Florida does not allow voters to fix an incomplete registration form once the deadline has passed, and many voters were not even notified that their registration was incomplete until that deadline had passed. Common Cause did not expend as much resources on this problem because there simply was no cure, but we estimate that even more legitimate voters were disenfranchised by this policy than by the no match, no vote policy.

Voter Registration for Veterans

Amazingly, hundreds of thousands of veterans who risked their lives in defense of the nation faced difficulty registering to vote this past election cycle. For veterans with disabilities, voter registration opportunities through the VA are essential. Currently, when veterans move into a veterans’ facility, they have to change their voter registration to reflect their new address. However, thousands of veterans cannot re-register to vote without significant help due to their injuries or illnesses.

On May 5, 2008, the Veterans Health Administration issued Directive 2008-025, prohibiting all voter registration drives at its medical facilities and raising legal barriers to activities by nonpartisan voter registration groups.

In June and July, Common Cause and our coalition partners the American Association of People with Disabilities (AAPD), Demos and the League of Women Voters urged Secretary Peake to approve future state requests to allow voter registration at VA agencies and offices. Common Cause chapters around the country wrote letters to their respective state chief election officials (often the Secretary of State) urging them to write to the head of the Veteran's Administration making the same request.

In September, the VA reversed the decision to disallow non-partisan registration drives, but they still made it so difficult for non-partisan groups to help veterans register that in October it looked as though about 100,000 vets would not be able to register and vote by the November 4th election.

Conclusion

All of these incidents underscore the need to completely rethink how we do voter registration in this country, unique in that it places almost the entire burden on citizens to register to vote and make sure they stay registered throughout their lives.

The government needs to take a more pro-active role in this process so that we have in the end a system of universal registration. This means the expansion of same day registration from nine states to all 50. This practice would allow citizens to participate regardless of whether they made clerical errors in their registration forms, or election workers made errors processing their forms, thus alleviating the "disenfranchisement by typo" phenomenon. Moreover, eligible citizens would be allowed to participate regardless of arbitrary deadlines and bureaucratic snafus as long as they can prove residency.

We should also institute pre-registration of 16- and 17-year-olds in high school and automatic registration of citizens (with an opt-out provision) who interface with the government in any number of ways, including with Departments of Motor Vehicle (DMV) public assistance agencies, and upon completion of a term of incarceration and finalization of the naturalization process.

Elections officials should be required to update registrations of existing voters whenever they move within state based upon data readily available from U.S. Postal Service change of address databases, DMV databases, the Civil Service board, Social Security, Medicare, Medicaid, and state and federal income tax databases. Citizens would receive notices that their registration would be automatically updated to their new location unless they responded, to provide for those who may not wish to change their registrations, such as college students or those in the military who are only temporarily relocating and wish to vote at the permanent address.

Additionally Common Cause strongly supports the legislation sponsored by this committee last congress, the Veteran Voting Support Act, which would go a long way to assisting veterans in the voting process. This important legislation would have:

- Required the VA to make voter registration services available at VA facilities in states that

request it, in accordance with the National Voter Registration Act. These services include providing voter registration forms, answering questions on registration issues and assisting with submitting voter registration forms.

- Required the VA to assist veterans at facilities to receive and use absentee ballots if they choose to vote absentee.

- Allowed non-partisan groups and election officials to provide voter information and registration information to veterans.

- Required an annual report to Congress from the Department of Veterans Affairs on progress related to this legislation.

Thank you for considering our work and experience as you draft legislation address voter registration problems.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Edgar".

Bob Edgar
President
Common Cause